

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FILED

2011 JUN 28 PM 3:50

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FL
ORLANDO, FLORIDA

NATIONAL MENTOR HEALTHCARE,)
LLC, a Delaware limited liability company,)
LILLIAN TORRES and NANCY)
NIEMANN,)

Plaintiffs,

v.)

Case No. 10-11-CV-1075-ORL-316JK

COMMUNITY BASED CARE OF)
BREVARD, INC. d/b/a BREVARD)
FAMILY PARTNERSHIP, a Florida)
not-for-profit corporation,)

Defendant.

COMPLAINT
(INJUNCTIVE RELIEF SOUGHT)

Plaintiffs National Mentor Healthcare, LLC d/b/a Florida Mentor, a Delaware limited liability company ("Florida Mentor"), Lillian Torres, an individual and Nancy Niemann, an individual sue defendant Community Based Care of Brevard, Inc. d/b/a Brevard Family Partnership, a Florida not-for-profit corporation ("CBCB") and say:

GENERAL ALLEGATIONS

1. This action is brought pursuant to 42 U.S.C. § 1983 to address the deprivation, under the color of state law, of rights secured by the laws of the United States.

2. Florida Mentor is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. Florida Mentor is a member of the National Mentor Network, an integrated network of community-based providers that support

individuals with developmental disabilities. The Mentor Network is the largest therapeutic foster care provider in the country. Florida Mentor operates 33 homes within Brevard County, Florida.

3. Plaintiff Lillian Torres is a resident of Brevard County, Florida. She provides foster parent care to foster children pursuant to an agreement she has with Florida Mentor. Plaintiff Torres would prefer to continue to provide foster parent care through her agreement with Florida Mentor.

4. Plaintiff Nancy Niemann is a resident of Brevard County, Florida. She provides foster parent care to foster children pursuant to an agreement she has with Florida Mentor. Plaintiff Niemann would prefer to continue to provide foster parent care through her agreement with Florida Mentor.

5. Defendant CBCB is a Florida not-for-profit corporation with its principal place of business in Brevard County, Florida.

6. This Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. § 1331 because claims asserted in it arise out of laws of the United States. As shown below, this action asserts that CBCB has violated the Medicaid freedom of choice statute found at 42 U.S.C. § 1396a(a)(23) and the comparable Florida statutory provision found at 409.1671(1)(e), Florida Statute.

7. Florida Mentor serves in Brevard County, Florida at-risk youth adjudicated dependent and ordered into foster care. The actions of CBCB as described below will prevent Florida Mentor from continuing to serve those individuals in Brevard County, Florida. Unless enjoined, the actions of CBCB will require Florida Mentor to cease providing services at all of its homes within Brevard County, Florida, some of which have

been operated by Florida Mentor for over 7 years. As many as 55 individuals will lose their provider of choice for these services.

8. Florida Mentor is a Medicaid provider. Florida Mentor has executed a provider agreement with the State of Florida Agency for Healthcare Administration (“AHCA”) which administers Florida’s Medicaid program. Under the provider agreement, Florida Mentor provides Medicaid-approved services and is then reimbursed by federal and state funds.

9. At the current time, Florida Mentor provides Medicaid and other foster care services for approximately 55 individuals in Brevard County, Florida.

10. This is an action for damages which exceed the sum of \$75,000 exclusive of interest and costs and for injunctive relief, both temporary and permanent, against defendant CBCB. To prevent immediate and irreparable harm, plaintiffs seek injunctive relief to stop CBCB from taking action which:

- a. Violates Section 1902(a)(23) of the Social Security Act, 42 U.S.C. § 1396a(a)(23) and Florida Statute § 409.1671(1)(e);
- b. Threatens the continuity of care Florida Mentor is providing to at-risk youth adjudicated dependent and ordered into foster care; and
- c. Interferes with contracts and advantageous business relationships Florida Mentor has with its foster parents in Brevard County, Florida and with other funding sources.

COUNT I

**VIOLATION OF THE MEDICAID AND
FLORIDA FREEDOM OF CHOICE PROVISIONS**

11. Plaintiffs reallege and incorporate herein the allegations in paragraphs 1 through 9 above.

12. Since 2004, Florida Mentor has provided community-based child welfare services in Brevard County, Florida. Since 2005, Florida Mentor has provided such services pursuant to a contract with CBCB.

13. The contract between Florida Mentor and CBCB expires on June 30, 2011. CBCB recently determined to limit Medicaid eligible beneficiaries to only one provider for foster care services including therapeutic foster care services currently provided by Florida Mentor for individuals within Brevard County, Florida.

14. The primary funding source for payments made to Florida Mentor and the other providers of such child welfare services is Medicaid. Medicaid is a federal medical assistance program for the poor and medically needy adopted in 1965. It is financed by federal, state and municipal funds and administered by each participating state. Medicaid is governed by the Social Security Act, 42 U.S.C. § 1396a et seq. The Social Security Act contains the Medicaid “freedom of choice provision” which mandates that Medicaid recipients have freedom to choose to receive covered services from any provider qualified to provide those services:

A state plan for medical assistance must provide that any individual eligible for medical assistance ... may obtain such assistance from any institution, agency, community

pharmacy, or person qualified to perform the service or services required ... who undertakes providing such services”

42 U.S.C. § 1396a(a)(23).

Florida has a comparable provision found at Fla. Stat. § 409.1671(1)(e). That Florida Statute requires that CBCB “contract through a local network of providers all necessary child protective services.” CBCB has violated this Florida Statute by effective July 1, 2011 not contracting with a network of providers.

15. The actions of CBCB in eliminating all but one provider for these child welfare services in Brevard County denies to Medicaid eligible individuals the freedom of choice guaranteed them by the Medicaid and Florida freedom of choice provisions to receive Medicaid eligible services from Florida Mentor as their provider of choice as well as denies Florida Mentor the right to provide those services and be reimbursed by Medicaid.

16. Florida Mentor is in all respects fully qualified to provide the services it has been providing pursuant to its contract with CBCB.

17. Florida Mentor and the individuals it serves in Brevard County will be irreparably injured in the event injunctive relief is not granted to permit Florida Mentor to continue to provide those services.

18. In taking the actions as described above, CBCB is acting under the color of state law for the reason that it is performing a public function. The majority of children served by Florida Mentor in Brevard County, Florida were placed in foster care due to maltreatment or the inability of their biological parents to parent effectively, constituting involuntary placements.

19. Florida Mentor operates several homes in Brevard County, Florida which serve individuals who previously resided outside Brevard County, Florida. The cost of the services provided by Florida Mentor for these individuals is not provided by CBCB. Despite this CBCB has demanded that Florida Mentor cease operating these homes.

20. CBCB's demand that Florida Mentor cease operating these homes has no real basis and will result unless enjoined in a violation of those individuals' freedom of choices provided for by 42 U.S.C. § 1396a(23).

21. Florida Mentor has no adequate remedy at law nor do the individuals served by Florida Mentor.

22. Florida Mentor brings this action on behalf of itself and the individuals it serves within Brevard County, Florida.

23. All conditions precedent to the maintenance of this action have occurred or been performed.

24. Florida Mentor has suffered damages as the result of the actions of CBCB described above including but not limited to the loss of approximately \$250,000 in lease payments on its office in Brevard County, Florida.

Wherefore, Florida Mentor requests the Court enter a temporary restraining order followed by a preliminary and permanent injunction and award damages as well as the costs of this action and other appropriate relief.

25. Florida Mentor is entitled to preliminary and permanent injunctive relief because:

- a. It has a substantial likelihood of success on the merits;

- b. It has a substantial threat of irreparable injury if the injunction is not granted;
- c. The threat of injury to Florida Mentor outweighs the harm an injunction may cause the defendant; and
- d. Granting the injunction would not disserve the public's interest and in fact would greatly serve the public interest.

COUNT II

TORTIOUS INTERFERENCE WITH CONTRACTS AND ADVANTAGEOUS BUSINESS RELATIONSHIPS

- 26. Plaintiffs reincorporate the allegations of paragraphs 1 through 9 above.
- 27. Of the homes operated by Mentor in Brevard County, Florida several serve at-risk youth adjudicated dependent and ordered into foster care, all of whom originally resided outside of Brevard County, Florida. None of the funding for these homes comes from CBCB.
- 28. Florida Mentor provides services to these individuals in these homes pursuant to contracts with foster parents and other CBCB's within the State of Florida.
- 29. CBCB is aware of the contracts described in paragraph 27.
- 30. CBCB is interfering with those contracts by demanding that Florida Mentor cease operating these homes within Brevard County, Florida.
- 31. CBCB's interference with the contracts is intentional and unjustified.
- 32. Florida Mentor has been damaged by and will be damaged by CBCB's interference with those contracts including a loss of approximately \$250,000 in lease payments.

COUNT III

**DECLARATORY AND INJUNCTIVE RELIEF
CONCERNING FLORIDA MENTOR'S RIGHTS
UNDER IT'S WRITTEN AGREEMENT WITH CBCB**

33. Florida Mentor realleges the allegations of paragraphs 1 through 9 above.

34. The contract between Florida Mentor and CBCB contains the following language:

Foster homes that are recruited and licensed using CBCB funds are to remain property of CBCB upon contract termination.

35. CBCB has taken the position that this language requires Florida Mentor to cease operating the homes in Brevard County, Florida that are not funded and have never been funded by CBCB funds.

36. Florida Mentor does not believe the cited contract language requires Florida Mentor to give up the 14 homes which are not funded and have never been funded by CBCB. The rights and obligations of Florida Mentor and CBCB are in dispute. Florida Mentor and CBCB have an actual present adverse and antagonistic interest with respect to the rights and obligations. The Court has the power to enter a declaratory judgment determining the rights and obligations of the parties pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201-2202 and §§ 86.011 and 86.031, Florida Statutes.

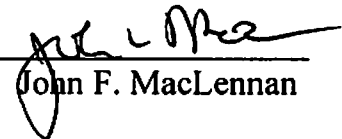
Wherefore, Florida Mentor requests the Court enter a declaratory judgment determining the rights and obligations of the parties in finding that CBCB does not have the right to require Florida Mentor to cease operating the homes described in paragraph 36 above.

DEMAND FOR RELIEF

Wherefore, plaintiffs respectfully request the Court:

1. Accept jurisdiction of this cause and set it for hearing;
2. Declare that CBCB has violated the rights of the plaintiffs for the reasons specified above;
3. Issue a temporary restraining order and preliminary injunction later to be made permanent enjoining CBCB from taking any action which prevents Florida Mentor from operating the foster homes it operates in Brevard County, Florida;
4. Issue a temporary restraining order and preliminary injunction later to be made permanent enjoining CBCB from denying to individuals who desire to receive therapeutic foster care services from Florida Mentor in Brevard County, the right to receive those services from Florida Mentor.
5. Award plaintiffs their costs and attorneys fees pursuant to 42 U.S.C. § 1988;
6. Award plaintiffs all other proper and appropriate relief.

SMITH HULSEY & BUSEY

By 
John F. MacLennan

Florida Bar Number 0206415
225 Water Street, Suite 1800
Jacksonville, FL 32202
(904) 359-7700
(904) 359-7708 (facsimile)
jmaclellan@smithhulsey.com

Attorneys for plaintiffs

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

National Mentor Healthcare, LLC, et al.

(b) County of Residence of First Listed Plaintiff Suffolk County, MA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Smith Hulsey & Busey, 225 Water Street, Suite 1800, Jacksonville,
FL 32202 (904) 359-7700

DEFENDANTS

Community Based Care of Brevard, Inc. d/b/a Brevard Family Partnership

County of Residence of First Listed Defendant Brevard County, FL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights 42 USC 1983	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC 1983Brief description of cause:
violation of 42 USC 1396a(a)(23)**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

6/28/11
FOR OFFICE USE ONLY

John J. Smith

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____